



Fire Safe Council of Nevada County
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February 5, 2024

Nevada County Grand Jury
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, California 95959

RE: Letter Communication Hand Delivered 1/2/2024 – Deborah Heller, Foreperson

Dear Ms. Heller,

I am writing to you in response to your communication that was hand delivered to our office on January 2nd, 2024. We have been in discussions regarding this and other requests with our legal counsel, and believe that this request, as well as the previous ones received for documents and in-person appearances, are outside of the Grand Jury's legal authority to request. While we greatly appreciate our relationship with the County and have dutifully complied with previous requests of the Grand Jury, these burdensome requests have continued to be made, and so feel it necessary to explain the relationship between the Nevada County Grand Jury ("Grand Jury") and the Fire Safe Council of Nevada County ("Council").

By way of explanation from our legal counsel, grand juries in California are governed by state statute, which provides guidance on their operation and authority, and none of which authorizes the Grand Jury to subpoena records or persons of the Council. As established by state statute, a grand jury "... shall be charged and sworn to investigate or inquire into *county matters* of civil concern, such as the needs of the county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1." (Penal Code § 888; see also Penal Code § 914.1 [Grand Jury may investigate "county matters of civil concern."]) Further, as stated on the Grand Jury's public facing website, "[t]he Nevada County Grand Jury is an arm of the County Superior Court that investigates, and issues reports to improve *local government* efficiency and to provide accountability and transparency." (<https://www.nevada.courts.ca.gov/general-information/grand-jury>; italics added.)

Penal Code § 914.1, consistent with Penal Code § 888, states that the Grand Jury is to inquire into "county matters of civil concern," and cites various code provisions defining the powers and duties of the Grand Jury. That section of the code then goes on to cite Penal Code § 888, discussed above. It also cites Article 2, commencing with § 925, which provides that grand juries are sworn to investigate "county

matters of civil concern, such as the needs of the county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1.” The Council is not a County agency subject to investigation pursuant to this section. Also cited is Article 3, commencing with § 934, which provides that a grand jury may request the advice of the judge or district attorney; this provision, likewise, does not authorize the Grand Jury to examine the records of the Council.

Penal Code § 914.1 also cites § 3060 of Chapter 7 of Division 4 of Title 1 of the Government Code, which addresses accusations by a grand jury against “any officer of a district, county, or city, including any member of a governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office . . .” This section clearly does not apply to the Council as it is not an officer nor personnel of any such entity. Finally, Section 914.1 cites Section 17006 of the Welfare and Institutions Code as providing authority for a grand jury to investigate welfare applications. Again, this provision clearly does not apply to the Council.

Even more specific to nonprofits, Cal. Penal Code § 933.6 provides that, “[a] grand jury may at any time examine the books and records of any nonprofit corporation *established by or operated on behalf* of a public entity [. . .] and, in addition to any other investigatory powers granted may investigate and report upon the method or system of performing the duties of such nonprofit corporation.” The plain language of the statute clearly limits such investigatory power to nonprofits that were either established by, or which are operated on behalf of, a public entity. Because the Council is independent and was not established by, nor is it operated on behalf of, Nevada County, this section of the Penal Code clearly does not apply to it.

While caselaw interpreting Cal. Penal Code § 933.6 is limited, the California Attorney General explained in Opinion No. 02-808 that a county was authorized to contract with a nonprofit mutual benefit corporation to promote tourism within the county despite a superior court ruling finding that the county grand jury lacked statutory authority to examine the books and records of the corporation because it was not performing a function of the county, nor was it operated on behalf of the county, despite receiving the majority of its funding from the county and providing “some benefit” to the county. (Op. Atty. Gen. No. 02-808 (Feb. 20, 2003), 2003 WL 437443.) This AG opinion supports the position that the Council is not under the authority of the County, even if it receives funding from the County.

The Council’s Articles of Incorporation specifically provide that it is a nonprofit public benefit corporation; the articles do not mention Nevada County because it was not established by Nevada County. (Ex. A, Articles of Incorporation.) Rather, it is an independent 501(c)(3) nonprofit organization separate and distinct from Nevada County.

Further, the Council’s Bylaws provide a mission statement noting that the council is a “non-profit, local volunteer organization” consisting of members from “all elements of the community.” (Ex. B, Bylaws.) Section 2 of the Bylaws states that the Board shall strive to provide representation from stakeholder groups such as local fire agencies, state agencies, federal agencies, air and water management, private business sector, insurance interests, county agencies, city agencies, Truckee area representatives, homeowners associations, members at large, and Firewise communities. The Council’s website lists numerous additional community partners, including the fire departments of Grass Valley, Higgins, Nevada City, Nevada County, North San Juan, Ophir Hill, Peardale-Chicago Park, Penn Valley, Rough & Ready, Truckee, and Washington. The website also lists community partners such as the Bureau of Land Management, California Air Resources Board, CalFire, California Fire Alliance, and numerous other

local, state, and federal governmental agencies. (See www.areyoufiresafe.com/partners.) Clearly, the Fire Safe Council is not operated on behalf of Nevada County, and instead partners with numerous private partners and government partners at the local, state, and federal level. The Council is an independent nonprofit corporation with a plethora of community partners in both the private sector and government; it is not a county agency.

In summary, while the Council greatly appreciates its relationship with the County, because the Council is a nonprofit corporation, neither established by or on behalf of the County of Nevada, the Grand Jury does not have the legal authority to subpoena records or in-person appearances of Council members or staff as a matter of course, or without further justification.

Notwithstanding, and as a courtesy reminder, any legally required nonprofit transparency documentation can be found on our website under “Non-Profit Transparency Documentation” at www.areyoufiresafe.com/non-profit-transparency-documentation.

Regards,

Jamie Jones
Executive Director, CEO

cc: Sean Cameron, Legal Counsel